THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.9442 OF 2006

DATED: 17th AUGUST, 2006.

Between :

B. Prabhakar .. Petitioner

And

1. The Commissioner of Proh. & Excise,
A.P., Hyderabad; and 2 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.9442 OF 2006

ORDER :

The petitioner claims to be the owner of a Hero Honda Motor Cycle bearing No.AP-1-E-5905. The said vehicle was seized by the Prohibition & Excise Inspector, Mancherial on the ground of illegal transportation of I.D. liquor. Accordingly, a case under Section 34 (a) of the A.P. Excise Act, 1968 was registered on 26-1-2005. That apart, the Prohibition & Excise Inspector submitted proposals for confiscation of the seized property and pursuant thereto a show-cause notice was issued to the petitioner under Section 46-A of the A.P. Excise Act, 1968 calling upon him to show-cause as to why the vehicle in question should not be confiscated. The 2nd respondent – Deputy Commissioner of Prohibition & Excise, Karimnagar., having considered the entire material on record as well as the statement of the accused, by order dated 9-6-2005 held that the offence of illegal transportation of I.D. liquor was established and accordingly directed that the seized vehicle shall be liable for confiscation under Section 45 of the A.P. Excise Act, 1968 (for short, 'the Act').

Aggrieved by the same, the petitioner preferred an appeal before the 1st respondent – Commissioner of Prohibition & Excise, A.P., Hyderabad. The said appeal was rejected as time-barred. The order of the 1st respondent dated 24-3-2006 may be extracted hereunder :

"Sri B. Prabhakar, S/o. Rajaiah, has filed an appeal, against the orders of confiscation of the vehicle Hero Honda bearing No.AP-1-E-5905 passed by the Deputy Commissioner of Prohibition & Excise, Karimnagar vide proceedings Cr.No.106/2005/P&Ex/A4, dated 9-6-2005. He is informed in this regard that there is delay of 196 days in preferring the appeal. The appeal is therefore rejected as time-barred."

Aggrieved by the same, this writ petition is filed contending inter alia that the action of the 1st respondent in rejecting the appeal on the ground of delay in preferring the appeal as arbitrary and illegal.

It is also contended by the petitioner that having regard to the facts and circumstances of the case, the 1st respondent ought to have condoned the delay and ought to have entertained the appeal and decide the same on merits.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Government Pleader for Prohibition & Excise while pacing reliance upon a decision of the Division Bench of this Court in W.A.No.2569 of 2005 submitted that the 1st respondent – appellate authority has no power to extend the period of limitation prescribed under Section 46-C of the Act and therefore the appeal preferred by the petitioner was rightly rejected.

Since the fact that the appeal was preferred beyond the limitation prescribed is not in dispute, the only question that arises for consideration is whether the order passed by the 1st respondent in rejecting the appeal on the ground that it is barred by limitation suffers from any infirmity.

The Division Bench of this Court in W.A.No.2569 of 2005 having

considered the scope and object of the very same provision i.e, Section 46-C of the A.P. Excise Act, 1968, held as under :

> *"The ratio of the aforementioned decisions is that the provisions of Section 29 (2) of the Limitation Act is attracted only when the two conditions specified therein, namely (1) that there is a provision for limitation under a special or local law in connection with any suit, appeal or application and, (2) that the period prescribed under special law is special than the one prescribed by the Schedule appended to the Limitation Act. In the present case, we find there is no provision in the Schedule of the Limitation Act for filing appeal against an order of confiscation of the vehicles used for committing an offence under the Act. Therefore, the provisions of Section 29 (2) of the Limitation Act cannot be invoked for extending the period of limitation prescribed under Section 46-C of the Act. As a corollary, it must be held that the learned Single Judge could not have directed the entertaining of the appeal filed by the respondent."*

In the light of the ratio laid down by the Division Bench, it cannot be held that the 1st respondent had committed any error in rejecting the appeal as barred by limitation.

Hence, the Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

However, this shall not preclude the petitioner to make an appropriate application before the 2nd respondent – Deputy Commissioner of Prohibition & Excise for compounding the offence under the provisions of the A.P. Excise Act, in which event the same shall be considered in accordance with law.

_____

(G. ROHINI, J.)

17th August, 2006.
gbs